

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

LEONARD BARNETT, DOING BUSINESS AS
BARNETT TUBE FITTING AND VALVE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0819

Decision No. CU - **369**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$916.37, was presented by LEONARD BARNETT based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant has been a national of the United States since his birth in New York State in 1906.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record contains a copy of a letter dated December 10, 1959, from Air-Sea Forwarding Service, Inc., addressed to the Trust Company of Cuba, which refers to a sight draft enclosed with shipping documents. The sight draft was in the amount of \$916.37, and drawn on Gonzalez y Sanchez, Havana, Cuba, by Barnett Tube Fitting and Valve Company.

Additionally, the record includes a letter of January 11, 1960, from the Trust Company of Cuba to claimant, in which it stated that the collection of \$916.37 was paid by the drawee, Gonzalez y Sanchez and that the Trust Company of Cuba was still awaiting a dollar reimbursement release from the Exchange Control Authorities. Claimant states that he has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on January 12, 1960, as to \$916.37, the day after the collection was acknowledged by the Trust Company of Cuba.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that LEONARD BARNETT, DOING BUSINESS AS BARNETT TUBE FITTING AND VALVE COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Hundred Sixteen Dollars and Thirty-Seven Cents (\$916.37), with interest thereon at 6% per annum from the date of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 4 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 6 NOV 1967

Thomas M. ...
... of the Commission